

Remarks

Claim 12 was rejected as anticipated by KOREN et al. 6,884,445. However, KOREN et al. do not disclose or suggest incorporating bicarbonate or other effervescent component in their compositions. Accordingly, amended claim 12 avoids the rejection, and reconsideration and withdrawal of the rejection are respectfully requested.

Claim 11 was rejected as unpatentable over KOREN et al. in view of TARRAL WO 96/33694. Reconsideration and withdrawal of the rejection are respectfully requested.

KOREN et al. do not disclose or suggest an effervescent system, and only refer to one in the discussion of the prior art. Moreover, the reference does not disclose or suggest producing a hot (>35°C) composition. While the reference refers to a temperature of 37°C in its examples, that temperature is combined with an acidic pH of 3, apparently to test the conditions of the composition after ingestion into the gastro-intestinal tract. This temperature is not mentioned within the context of the preparation of the composition.

TARRAL et al. disclose an effervescent system containing pectin, which requires the presence of magnesium to regulate calcium availability. KOREN et al. refer to TARRAL et al. as a complex system, thus teaching away from the use of such an effervescent system.

The composition of TARRAL et al. containing the effervescent system is reconstituted at ambient temperature, which is not above 35°C. It was found by the present inventors that an effervescent system improved the palatability of final fiber composition, but not sufficiently. The present inventors surprisingly found that the palatability was highly satisfactory when the composition was reconstituted at a temperature above 35°C (page 2 of the present application.)

Nothing in the proposed combination suggests that the problems of lumping and of poor taste of high fiber compositions could be solved simultaneously by using an effervescent system, even in the presence of non-digestible oligosaccharides, and by reconstituting the composition at high temperatures. Generally speaking, it is very uncommon to use high temperatures when reconstituting effervescent compositions; quite the contrary, effervescent compositions are normally used to avoid the necessity of using heat for the reconstitution. One of skill in the art would not make the suggested combination, and would not find a suggestion to reconstitute at high temperature even if the references were combined.

Accordingly, claim 11 avoids the rejection under §103.

New claim 20 has been added and is allowable because the references do not disclose or suggest adding both the bicarbonate and acidic component as claimed. Consideration and allowance of claim 19 are respectfully requested.

In view of the present amendment and the foregoing remarks, it is believed that the present application has been placed in condition for allowance, which is respectfully requested.

The Commissioner is hereby authorized in this, concurrent, and future submissions, to charge any deficiency or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

YOUNG & THOMPSON

/Thomas W. Perkins/

Thomas W. Perkins, Reg. No. 33,027
Customer No. 00466
209 Madison Street, Suite 500
Alexandria, VA 22314
Telephone (703) 521-2297
Telefax (703) 685-0573
(703) 979-4709

TWP/fb